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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,668	11/27/2001	Warren M. Sutton	P67041US0	8022

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EXAMINER

COHEN, AMY R

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/993,668

Applicant(s)

SUTTON, WARREN M.

Examiner

Amy R Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 30 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10 and 12-18 is/are rejected.
- 7) ☒ Claim(s) 11 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the arcuate, curved lines on said another surface must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 5 is objected to because of the following informalities:

Claim 5, lines 4-5 "a support surface" should be ~~the/said one support surface~~ since it was positively claimed in claim 1.

Examiner notes that when referring to surfaces that were claimed in claim 1, subsequent claims should use the same terminology throughout, i.e. one surface and another surface are the surfaces claimed; for consistency in claim language reference should be made to either the one surface or the another surface.

Appropriate correction is required.

3. Claim 16 is objected to because of the following informalities:

Claim 16, line 6 "or surface of said building floor" is confusing because, according to the preamble and the rest of the claim, the target locations are to be located on a ceiling; further, it is

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confusing because the reference markings are already on the floor so it is unclear as to why the target locations would also be on the floor.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4, 5, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson (U. S. Patent No. 3,988,837) in view of Woznow et al. (U. S. Patent No. 5,107,598).

Benson discloses an apparatus (10) for locating a point on one surface and indicating a corresponding point on another surface comprising a base (14) having an indicator (36, 38) thereon to position the base in predetermined relation to a point on one surface (20, Col 2, lines 60-65) and a light beam emitting device (40) mounted on said base in predetermined relation to said indicator to emit a light beam (64) to impinge on another surface (ceiling) to indicate a point on said another surface to the point on said one surface said indicator (Col 2, lines 60-65) including at least two longitudinally spaced pointers (36, 38) mounted on said base for alignment with a reference line on said one surface (Col 1, lines 30-68).

Benson discloses the apparatus wherein said base includes an upwardly extending handle (18) to enable manual movement of said base to a desired location on said one surface to position said pointer in alignment with said reference line on said one surface (Col 1, lines 57-68).

Benson discloses the apparatus wherein said base includes a support (42) mounted therein by a leveling structure (24, 26) and at least one bracket (Fig. 2) on said support to support said light beam emitting device (40) on said support (Fig. 2).

Benson does not disclose a device or method wherein said base includes a frame supported by a pair of rear wheels rotatably supported by a transverse axle mounted on said frame and a pair of caster front wheels to enable movement of said base along a support surface; wherein said base includes a linear measuring device connected with said rear wheels to indicate linear movement of said base along said one surface; wherein said linear measuring device is a resettable.

Woznow et al. discloses a device (10) wherein said base includes a frame supported by a pair of rear wheels (18, 20) rotatably supported by a transverse axle (17) mounted on said frame and a pair of caster front wheels (24, 26) to enable movement of said base along a support surface (Col 2, line 55-Col 3, line 17); wherein said base includes a linear measuring device (20, 50, 52) connected with said rear wheels to indicate linear movement of said base along said one surface (Col 3, line 61-Col 4, line 30); wherein said linear measuring device is a resettable (Col 4, lines 17-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Benson, to add the wheeled linear measuring device, as taught by Woznow et al., so that a user would have a more convenient way of moving the device from point to point and would be able to measure the moved distance, as already suggested by Benson (Col 1, lines 57-68).

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6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson and Woznow et al. as applied to claims 1, 2, 4, 5, 7 above, and further in view of Brunson (U. S. Patent No. 6,145,207).

Benson and Woznow et al. disclose the device as described above in paragraph 5.

Benson and Woznow do not disclose a device wherein the device is convertible between U. S. and metric units.

Brunson discloses a device wherein the device is convertible between U. S. and metric units (Fig. 5 and Col 6, lines 9-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Benson and Woznow et al., to include a conversion between U. S. and metric units, as taught by Brunson, so that a user could measure the distance in either units system, and since converting between units is well known in the art.

7. Claims 6, 13, 14, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson and Woznow et al. as applied to claims 1, 2, 4, 5, 7 above, and further in view of Studebaker (U. S. Patent No. 3,471,234).

Benson and Woznow et al. disclose the device as described above in paragraph 5.

Benson and Woznow et al. do not disclose a device wherein the light beam emitting device is a laser beam emitting device; and wherein said base includes a leveled top member, a drum mounted on said top member, said drum facing upwardly and including a 360° protractor on its upper surface, a pivot arm mounted on said drum and including a pointer associated with said protractor to indicate movement of the pivot arm in a horizontal plane about a vertical axis,

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and a laser beam emitting device mounted on said pivot arm for indicating arcuate, curved lines on said another surface in a horizontal and vertical plane.

Studebaker discloses a device (Fig. 1) wherein the light beam emitting device is a laser beam emitting device (18); and wherein said base includes a leveled top member (17), a drum (40) mounted on said top member, said drum facing upwardly and including a 360° protractor (42, 42a) on its upper surface, a pivot arm (30) mounted on said drum and including a pointer (43) associated with said protractor to indicate movement of the pivot arm in a horizontal plane about a vertical axis, and a laser beam emitting device (22) mounted on said pivot arm for indicating arcuate, curved lines on said another surface in a horizontal and vertical plane (Col 4, line 67-Col 4, line 40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Benson and Woznow et al. to replace the light with a laser beam emitting device and to include a drum with a protractor, as taught by Studebaker, since a laser beam is more accurate than a light bulb and so that a user could indicate a corresponding point on another surface, wherein the another surface is not directly above the device and wherein the user could indicate a set of points in an arcuate array if necessary by pivoting the device and user the protractor.

8. Claims 8, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson and Woznow et al. as applied to claims 1, 2, 4, 5, 7 above, and further in view of Dunlop et al. (U. S. Patent No. 5,912,733).

Benson and Woznow et al. disclose the apparatus as described above in paragraph 5.

Benson and Woznow et al. do not disclose an apparatus wherein the light source is a laser light source and wherein there is a pair of laser beam emitting devices, laterally adjustable.

Dunlop et al. discloses an apparatus for identifying a target point on an overhead surface (Col 3, lines 19-44) wherein the light source is a laser (24a).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of identifying target points of Benson and Woznow et al. to replace the light bulb with a laser, as taught by Dunlop et al., since a laser light would be more accurate than the light emitted from a light bulb.

Regarding claims 8, 12: Benson and Dunlop et al. disclose a method for identifying target points on a ceiling comprising a mobile laser. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide two lasers, one movable for adjustment (and cradles/holders), since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

9. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Dunlop et al. (U. S. Patent No. 5,912,733).

Benson discloses a method for identifying target points on a ceiling surface with respect to one or more reference markings on a floor surface (20) which comprises the steps of tracking a reference line or markings on a floor surface of a building floor with a mobile apparatus (10, Col 1, lines 30-56), and at appropriate intervals, identifying target locations on an overhead ceiling (66) or surface of said building floor by focusing vertical light beams (64) to said target

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locations by one or more lights properly positioned on said mobile apparatus (Col 1, lines 30-68).

Benson does not disclose a method wherein the light beams are laser beams and wherein there are two lasers, one fixed and one laterally adjustable.

Dunlop et al. discloses a method for identifying target points on a ceiling surface with respect to one or more reference markings on a floor surface of a building floor with a mobile apparatus (Fig. 1, Col 3, lines 19-44), and at appropriate intervals, identifying target locations on an overhead ceiling or surface of said building floor by focusing vertical laser beams (30) to said target locations by one or more lasers (24a) properly positioned on said mobile apparatus (Col 3, lines 19-44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of identifying target points of Benson to replace the light bulb with a laser, as taught by Dunlop et al., since a laser light would be more accurate than the light emitted from a light bulb.

Regarding claim 17: Benson and Dunlop et al. disclose a method for identifying target points on a ceiling comprising a mobile laser. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide two lasers, one movable for adjustment, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

10. Claims 9 and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson, Woznow et al. and Dunlop et al. as applied to claims 1, 2, 4, 5, 7, 8, 12, and 14 above, and further in view of Hervey (U. S. Patent No. 15,040).

Benson, Woznow et al., and Dunlop et al. disclose the apparatus as described above in paragraph 8.

Benson, Woznow et al., and Dunlop et al. do not disclose an apparatus wherein said pair of laser beam emitting devices are supported on a pair of parallel, laterally adjustable support arms, a laser beam emitting device mounted on each support arm.

Hervey discloses a sighting apparatus (Fig. 1) wherein comprising a pair of sighting devices (S, S') which are supported on a pair of parallel, laterally adjustable support arms (R and l), a sighting device mounted on each support arm (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Benson, Woznow et al., and Dunlop et al. to specify that each of the pair of laser beam emitting devices be mounted on one of a pair of support arms, as taught by Hervey, so that a user could easily adjust the distance between the laser beams in order to indicate a distance between targets.

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson, Woznow et al., Dunlop et al., and Hervey as applied to claims 1, 2, 4, 5, 7, 8, 9, 12, 14, and 15 above, and further in view of Ericksen (U. S. patent No. 4,750,271).

Benson, Woznow et al., Dunlop et al., and Hervey disclose the apparatus as described above in paragraph 10 and having an upwardly extending handle (16, 23) at a rearward edge portion thereof terminating at an elevation enabling a user to comfortably grasp the upper end (16) of the handle while in an upright position to move the cart to a desired location (Woznow et al., Fig. 1).

Benson, Woznow et al., Dunlop et al., and Hervey do not disclose an apparatus wherein said indicator includes a pair of longitudinally spaced and aligned pointers depending from said cart and being vertically adjustable in relation thereto to enable the lower end of each pointer to be positioned in alignment with and adjacent said reference marking on a floor surface.

Ericksen discloses an alignment apparatus (Fig. 1) wherein said indicator includes a pointer (48) depending from said apparatus and being vertically adjustable (30) in relation thereto to enable the lower end of the pointer to be positioned in alignment with and adjacent said reference marking on a floor surface (Fig. 1 and Col 2, lines 25-68).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Benson, Woznow et al., Dunlop et al., and Hervey to include vertically adjustable pointers, as taught by Ericksen, so that a user could more accurately place the device over the reference markings by adjusting the pointer to touch the markings instead of simply sighting the alignment.

Allowable Subject Matter

12. Claims 11 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Allowance

13. The following is an examiner's statement of reasons for allowance:

The prior art of record does not disclose or suggest an apparatus for locating a point on one surface and indicating a corresponding point on another surface wherein each of the support

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arms includes a flexible, rewindable tape measure associated therewith in combination with the remaining limitations of the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

14. Applicant's arguments with respect to claims 1, 2, 4-10, 12-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R Cohen whose telephone number is (703) 305-4972. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3431.

ARC
April 23, 2003



Diego Gutierrez
Supervisory Examiner
Tech Center 2800